

**REMARKS/ARGUMENTS**

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith.

**I. STATUS OF THE CLAIMS AND FORMAL MATTERS**

Claims 1, 2, 4-11, 16, 18-24 are pending. Claims 3, 12-15, 17 and 25-27 are hereby canceled without prejudice or disclaimer of subject matter. Claims 1, 2, 11 and 16 are independent, and hereby amended. No new matter has been added. Support for this amendment is provided throughout the Specification as originally filed and specifically on pages 42. It is submitted that these claims, as originally presented, were in full compliance with the requirements of 35 U.S.C. §112. Changes to claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

**II. REJECTIONS UNDER 35 U.S.C. §112**

Claim 11, which was rejected under 35 U.S.C. 112, has been amended, obviating the rejection. Claim 15 is hereby canceled.

**III. REJECTIONS UNDER 35 U.S.C. §102 and §103**

Claims 1, 2, 4-7, 9-12, 14-16, 18-21, 23-25 and 27 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 5,864,678 to Riddle et al. (hereinafter, merely "Riddle").

Claims 3 and 17 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Riddle in view of U.S. Patent No. 5,907,556 to Hisanaga et al. (hereinafter, merely “Hisanaga”).

Claims 8, 13, 22 and 26 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Riddle and Hisanaga in view of U.S. Publication No. 2006/0064440 to Perry (hereinafter, merely “Perry”).

#### IV. RESPONSE TO REJECTIONS

Claim 1 recites, *inter alia*:

“...transfer rate determining means for calculating a predicted completion time of a data transfer based on a predetermined transfer rate, said transfer rate determining means further determining whether said data transfer is completed within said predicted completion time,

**wherein said transfer rate setting means changes said transfer rate if at least a predetermined number of results of the determination by said transfer rate determining means are consecutively equal...**” (Emphasis added)

Claim 1, as amended, incorporates the features of previous claim 3.

As understood by Applicants, Riddle relates to data transmission between networked computer systems.

As understood by Applicants, Hisanaga relates to a method of data transmission and a system using it for performing contention control among attempts of data transmission in the case where plural data transmission attempts are executed on a shared transmission medium on a computer network.

As understood by Applicants, Perry relates to e-Manufacturing systems and methods that represent the foundation for inter-tool, manufacturer-to-manufacturer or manufacturer-to-supplier cooperation.

Applicants respectfully submit that neither Riddle nor Hisanaga nor Perry, taken alone or in combination, would teach or suggest the above identified features of claim 1. Specifically, none of the references used as a basis for rejection describe said transfer rate setting means changes said transfer rate if at least a predetermined number of results of the determination by said transfer rate determining means are consecutively equal, as recited in claim 1.

Specifically, the Office Action concedes that Riddle fails to teach or suggest the subject matter of claim 3, which has been incorporated into claim 1. Claim 1 now recites that “transfer rate setting means changes said transfer rate” and “a predict completion time of a data transfer based on a predetermined transfer rate”. Indeed the Office Action asserts that Hisanaga discloses the transmission rate change in the case where the attempt of data transmission has already been started and the transmission rate is to be changed by subtracting a time required for changing the transmission rate from the point of completion of data transmission which has been notified (See, Hisanaga, col. 8, lines 40-46). However, Applicants submit that nothing has been found in Hisanaga that would teach said transfer rate setting means changes said transfer rate if at least a predetermined number of results of the determination by said transfer rate determining means are consecutively equal, as recited in claim 1.

Therefore, Applicants respectfully submit that Hisanaga fails to teach or suggest said transfer rate setting means changes said transfer rate if at least a predetermined number of results of the determination by said transfer rate determining means are consecutively equal, as

recited in claim 1. Thus, since Hisanaga fails to teach or suggest the features now recited in claim 1, Applicants respectfully submit that the Office Action has failed to make a *prima facie* rejection of the claims.

Therefore, Applicants respectfully submit that claim 1 is patentable.

Claim 16 is amended by incorporating the features of previous claim 17.

For reasons similar to those described above with regard to independent claim 1, independent claims 2, 11 and 16 are also patentable.

#### **V. DEPENDENT CLAIMS**

The other claims are dependent from an independent claim, discussed above, and are therefore believed patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

#### **CONCLUSION**


In the event the Examiner disagrees with any of the statements appearing above with respect to the disclosures in the cited reference, or references, it is respectfully requested that the Examiner specifically indicate the portion, or portions, of the reference, or references, providing the basis for a contrary view.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Respectfully submitted,

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